IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 4TH JULY 2007 / 13TH ASHADHA 1929

Crl.MC.No. 2147 of 2007()

SC.925/2007 of II ADDL. SESSIONS COURT, TRIVANDRUM
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PETITIONER: ACCUSED:

SUDARSANAN, S/O. SUKUMARAN,
ALAKKARAYIL PAZHINJIYIL VEEDU, KULAPPATTOM,
KEEZHATTINGAL DESOM, KEEZHATTINGAL VILLAGE,
THIRUVANANTHAPURAM DISTRICT.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: STATE:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 04/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.2147 of 2007

Dated this the 4th day of July, 2007

O R D E R

Petitioner faces indictment in a prosecution under Section 302 I.P.C. The alleged incident took place as early as in 1993. Altogether there were 4 accused persons. The petitioner and one other co-accused were not available for trial. The petitioner is the 2nd accused. Accused 1 and 4 faced trial. In the trial against those co-accused, they were found not guilty and acquitted. Long later, the petitioner has appeared before the court. Proceedings against him are continuing. The petitioner has come to this Court with this petition under Section 482 Cr.P.C with a prayer that the proceedings against him may be quashed.

2. What is the reason ? The learned counsel for the petitioner only submits that in the trial against the co-accused, certain findings have been entered by the learned trial Judge, the advantage of which must be conceded to the petitioner herein also. The learned counsel for the petitioner submits that the dictum in [**Moosa v. Sub Inspector of Police** [2006(1) KLT 552 F.B] cannot be held to cover the factual situation in this case. The learned Judge after trial in this case had come to the conclusion that the prosecution has not succeeded in explaining the genesis of the incident. That finding will not be altered even if a separate trial is conducted. This in short is the plea raised.

3. I am unable to accept the contentions raised at all. The mere fact that the co-accused have secured acquittal in the trial held against them is no reason for an absconding co-accused like the petitioner to claim any benefit or advantage. The prosecution will still be able to adduce all necessary evidence in support of their case. Merely because in the earlier trial there was some laches, that will not at all preclude the prosecution from adducing appropriate evidence in the trial and other appropriate explanations. More over, I am not at all satisfied that an absconding accused like the petitioner herein is entitled to seek invocation of the extraordinary inherent jurisdiction. Such jurisdiction is to be invoked only sparingly and in exceptional cases and that too in aid of justice. I am of the opinion that the petitioner is not one person in whose favour such jurisdiction can or ought to be invoked.

4. This Crl.M.C is, in these circumstances, dismissed.

(R.BASANT, JUDGE)

rtr/-